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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/993,158	11/16/2001	Kenneth B. Higgins	5113D	1180

7590  
Milliken & Company  
P.O. Box 1926  
Spartanburg, SC 29304

06/18/2007

EXAMINER
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JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

MAIL DATE	DELIVERY MODE
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06/18/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	09/993,158		HIGGINS ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Cheryl Juska		1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 April 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,3-35,38,40,58-72,77-79,81-85 and 151 is/are allowed.
- 6) ☒ Claim(s) 41,88,123,130,134,136,138 and 141 is/are rejected.
- 7) ☒ Claim(s) 42-49, 89-97, 99, 100, 102-122, 124-128, 131, and 135 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

Continuation of Disposition of Claims: Claims pending in the application are 1,3-35,38,40-49,58-72,77-79,81-85,88-97,99,100,102-128,130,131,134-136,138,141 and 151.

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## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's amendment filed April 2, 2007, has been entered. Claim 5 has been amended as requested. Claims 2, 36, 37, 39, 50-57, 73-76, 80, 86, 87, 98, 101, 129, 132, 133, 137, 139, 140, and 142-150 have been cancelled. The pending claims are 1, 3-35, 38, 40-49, 58-72, 77-79, 81-85, 88-97, 99, 100, 102-128, 130, 131, 134-136, 138, 141, and 151.

### ***Response to Arguments***

2. Applicant's arguments filed with the amendment with respect to the prior art rejections have been fully considered. Upon review of the prior art rejection in question, the examiner is in agreement with applicant that DeSimone teaches away from the present invention (Amendment, page 22, 2<sup>nd</sup> paragraph), as recited in at least claim 1. While the examiner maintains DeSimone is directed to attached cushioned carpets rather than unattached, carpet underlayment or padding as argued by applicant (Amendment, paragraph spanning pages 22-23), the teachings of the reference do not render the present claims obvious.

3. Note DeSimone teaches the rebond foam may be a core layer sandwiched between outer skin layers, preferably of polyurethane foam, but also including woven or unwoven fabrics such as carpet backing. This sandwich laminate is formed in-situ, wherein the rebond foam mixture is sandwiched between two skin layers before allowing said foam mixture to cure. In other words, DeSimone teaches in-situ formation of a rebond foam core layer with at least one skin layer being a "carpet backing" woven or nonwoven fabric. In such an embodiment, the rebond foam

layer would not be a surface layer for which to employ in a flame lamination process. Rather, the “carpet backing” fabric would be the exposed surface of the foam laminate and hence, would not be suited for flame lamination to another layer.

4. It was previously stated that “this ‘in-situ’ can be interpreted as the making of the preformed sheet of rebond, which is subsequently flame laminated as is known in the art” (last Office Action, section 13, pages 5-6). This argument referred to the embodiment wherein the in-situ sandwich comprised polyurethane foam skin layers, which are capable of flame lamination to another layer. However, this argument is improper since one would not be motivated from the teachings of DeSimone, wherein the rebond foam core laminate is made in-situ with a carpet backing fabric skin layer, to form a pre-made rebond foam core having foam skin layers and then subsequently flame laminating this sandwich laminate to a carpet backing fabric. In other words, one would not be properly motivated to modify the DeSimone process with additional, costly, unnecessary steps and layers (e.g., flame lamination via polyurethane foam skin layers) to produce the same end result of an attached rebond cushioned carpet. Therefore, the rejections based upon Higgins ‘857, DeSimone, and Official Notice as set forth in sections 5-9 of the last Office Action are hereby withdrawn.

5. An updated search of the prior art has produced no new art for which to base a rejection upon. However, the prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 41, 88, 123, 130, 134, 136, 138, and 141 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
8. Claim 41 is indefinite for the phrase “said layer of reinforcing material bonded to *at least one of* an upper *and lower* surface of the rebond foam cushion via flame lamination. If the carpet tile comprises an adhesive mass in bonding relation between the primary carpet and the layer of reinforcing material, then said reinforcing material physically cannot be bonded to *the lower surface* of the rebond foam cushion via flame lamination. Hence, claim 41 is rejected as indefinite.
9. Claims 88, 123, 130, 134, 136, 138, and 141 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite because it is unclear what layers are flame laminated together? Note this rejection was part of the 112, 2<sup>nd</sup> rejection on record in the Final Rejection Office Action mailed 02/24/06, but was erroneously dropped in the last Office Action, mailed 11/02/06. Also note independent claims 1, 41, and 58 are not rejected due to the recitations of “with a flame laminate junction therebetween” and “bonded...via flame lamination.”
10. Claim 123 is indefinite because it is unclear if the “cushion back” layer is part of or in addition to the “flame lamination backing composite.” In other words, is said “cushion back” the same or different than the “preformed sheet of foamed polyurethane particles bonded together.”
11. Claim 130 is indefinite because it is unclear if applicant intends to positively recite a carpet layer in addition to the flame laminated backing composite or if applicant merely intends

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to just the flame laminated backing composite for use in a carpet tile. Claim 134 is similarly rejected.

12. Claim 134 is also rejected since the structural relationship of the “textile face” is unclear. Is said face part of the flame laminated backing composite or is said face referring to a primary carpet layer?

13. Claim 141 is indefinite because it is unclear if the claimed “stabilizing layer” is the same or different from the “layer of reinforcing material.”

#### ***Allowable Subject Matter***

14. Claims 1, 3-35, 38, 40, 58-72, 77-79, 81-85, and 151 are allowed.

15. Claims 41, 88, 123, 130, 134, 136, 138, and 141 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

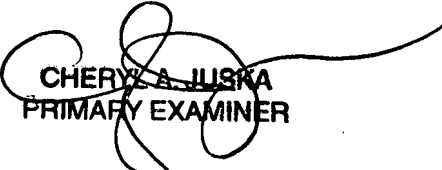
16. Claims 42-49, 89-97, 99, 100, 102-122, 124-128, 131, and 135 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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18. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
CHERYL A. JUSKA  
PRIMARY EXAMINER

cj  
June 4, 2007